IN THE HIGH COURT OF JUDICATURE CHHATTISGARH
AT BILASPUR

Second Appeal No. 78 / 2006 **Single Bench**

Appellants (Defendants) :

1. Smt. Nilima Chatterjee,
D/o Late Sheebo Kumar Chatterjee,
Aged about 35 years,

2. Gopal Chatterjee,
S/o Late Sheebo Chatterjee,
Aged about 33 years

Appellant no. 1 & 2 are R/o
Tikrapara Kanker,
Tehsil & Dist : Kanker-(C.G.)

3. Aaseema Chatterjee,
D/o Late Sheebo Chatterjee, Aged About 29 years,
Now Smt.Aseema Sharma,
W/o V.P.Sharma,
Aged about 38 years,
R/o Vikas Nagar Kondagaon-(C.G.)

P.R. No. 4-52 to 6
Presented by Shri Vikas Sharma
Date 17/3/06

Versus

Respondents (Plaintiffs) :

1. Mahipal Mehra,
S/o Kewal Kishan Mehra,
Aged about 31 years,

Defendant

2. Ravindranath Banerjee,
S/o Prabath Kumar Banerjee,
Aged about 30 years,
M.G.Road, Raipur,
Dist : Raipur-(C.G.)

3. Nepal Chatterjee
S/o Sheebo Chatterjee,
Aged about 31 years,
R/o Tikrapara Kanker,

SECOND APPEAL U/S 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

26

आदेश पत्रक

मामला क्रमांक SA No. 78/2006 सन्

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

18.04.2006

On being mentioned, the case is taken up for hearing.

Shri Prafull Bharat, learned counsel for the appellants.

None for respondents.

Heard on admission and M.(C.)P.No.279/2006.

Plaintiff Mahipal Mehra (respondent No.1) preferred a Civil Suit for specific performance of contract against defendant Ravindranath Banerjee (respondent No.2) averring that on 02.11.1988, respondent No.2 entered into an agreement to sell the suit property to the plaintiff (respondent No.1) for a consideration of Rs.23,000/- and received earnest money Rs.2,100/-. He also executed a written agreement to this effect. Plaintiff (respondent No.1) arranging the balance sum of Rs.21,000/- and expenses towards registration approached Ravindranath Banerjee (respondent No.2) for execution of registered sale deed; but, the execution of registered sale deed could not be materialized. Plaintiff (respondent No.1) was always willing and ready for making the payment and got the registered sale deed executed. Ravindranath Banerjee (respondent No.2) on 16.12.1988 ignoring the said agreement alienated the suit property by registered sale deed in favour of Smt Dipali Chatterjee, the mother of appellants and respondent No.3. On account of agreement to sale dated 02.11.1988 the sale in favour of Dipali Chatterjee is null and

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक SA 78/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

void. Respondent No.3 and appellants denied the claim of the plaintiff. They denied the execution of agreement to sale and pleaded that sale deed executed by Ravindranath Banerjee (respondent No.2) in favour of Dipali Chatterjee dated 16.12.1988 is valid.

Both the parties in support of their respective cases led oral and documentary evidence. The trial Court after scrutiny of the evidence, held that Ravindranath Banerjee (respondent No.2) entered into an agreement to sell the suit house for a consideration of Rs.23,000/- on 02.11.1988 in favour of plaintiff (respondent No.1) and after receiving earnest money Rs.2,100/-, executed the written agreement. Plaintiff Mahipal Mehra (respondent No.1) was always ready and willing to perform his part of the agreement; but Ravindranath Banerjee (respondent No.2) instead of performing his part by executing registered sale deed in favour of plaintiff Mahipal Mehra, sold out the house in favour of Dipali Chatterjee on 16.12.1988. The said sale deed is void; therefore, decreed the suit in favour of plaintiff Mahipal Mehra (respondent No.1) for specific performance of contract.

Being aggrieved by the judgment and decree dated 07.03.2000 passed by Civil Judge Class I, Kanker, in Civil Suit No.6A/96, appellants and respondent No.3 filed an appeal bearing appeal No.70-A/2002. The appeal was heard on merit by the Additional

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक SA 78/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

District Judge Kanker who vide impugned judgment and decree dated 12.01.2006, affirmed the findings of lower Court and dismissed the appeal. Being aggrieved by the judgment and decree of First appellate Court, this Second appeal under Section 100 of the CPC has been preferred.

Appellants in their memo of appeal have proposed the following questions stating all of them to be substantial questions of law:-

1. Whether the Court below were justified in decreeing the suit filed by the plaintiff ?
2. Whether the suit filed by the plaintiff in its present form was maintainable or any relief without getting set aside the sale deed made in favour of appellant can be granted to the plaintiff ?
3. Whether in view of Section 35 of the Stamps Act the alleged agreement to sale was admissible in evidence or can be relied upon ?
4. Whether without satisfying the requirement necessary for seeking relief in equity a party can seek performance of contract ?
5. Whether the Court below were justified in holding that the signature on the alleged agreement to sale are of defendant No.1 ?
6. Whether the conclusions and findings recorded by the court below are perverse and without any cogent evidence which has affected the judgment and decree of the Court below ?

During the argument, learned counsel for the appellants contended that agreement was not duly stamped, therefore, the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक SA 78/06 सन् 200

विरुद्ध

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agreement was inadmissible in evidence. Section 36 of the Indian Stamp Act 1899 makes it clear that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Admittedly, the document has been admitted in evidence.

Further learned counsel for the appellants contended that plaintiff failed to plead his readiness and willingness, but that is not correct because in plaint para three pleading in this regard has been made by the plaintiff.

Learned counsel for the appellants further contended that both the Courts below have recorded the findings by misreading the evidence, but during the argument, failed to demonstrate how the conclusions and findings recorded by the Courts below were the result of misreading of evidence or erroneous application of law.

Both the Courts below on appreciation of material evidence on record gave concurrent finding regarding execution of agreement to sale in favour of plaintiff (respondent No.1) by Ravindranath Banerjee (respondent No.2) and alienation of the suit property by him in favour of Dipali Chatterjee to be void. Both the Courts below also held plaintiff (respondent No.1) entitled for decree of specific performance of the contract.

[पीछे देखिये

HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक SA 78 सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
padma	After due consideration of all the facts, and scrutiny of oral evidence of Mahipal Mehra (PW-1) Mohd Bhai (PW-2) and Ratan Lal Thakur (PW-3) examined to support the plaintiff's case and also the evidence of Ravindranath Banerjee (DW-1), particularly his statement in cross examination and documents on record, I am of the opinion that the appeal does not involve any substantial question of law, therefore, the appeal deserves to be dismissed summarily and is accordingly dismissed. In the light of above order, M.(C.)P.No.279/2006 stands disposed of. Sd/- V.K.Shrivastava Judge	